

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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ALGONQUIN CAPITAL MANAGEMENT, LLC,  
A Connecticut Limited Liability Company,

Civil Action Number: 07-cv-7522

Plaintiff,

**VERIFIED ANSWER  
TO FIRST AMENDED COMPLAINT**

- against -

JOSEPH MACEDA,

Defendant.

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Defendant, JOSEPH MACEDA, by his attorneys WHITE, CIRRITO & NALLY, LLP,  
as and for his Verified Answer to Plaintiff's First Amended Complaint, states as follows:

**AS TO THE PRELIMINARY STATEMENT and PARTIES**

FIRST: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in Paragraphs numbered "1" and "2" of the Complaint.

**AS TO JURISDICTION and VENUE**

SECOND: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in Paragraphs numbered "5" and "6" of the Complaint.

THIRD: Denies each and every allegation contained in Paragraph "4" of the  
Complaint.

**AS TO THE BACKGROUND FACTS**

FOURTH: Denies knowledge or information sufficient to form a belief as to the  
allegations contained in Paragraphs numbered "7" and "8" of the Complaint.

FIFTH: Denies each and every allegation contained in Paragraphs "9", "10" and "11"  
of the Complaint.

**AS TO COUNT ONE- Breach of Contract**

SIXTH: Defendant repeats, reiterates and realleges each and every admission and  
denial to paragraphs numbered "1" through "11", with the same force and affect as though  
the same were set forth at length herein.

SEVENTH: Denies each and every allegation contained in Paragraphs "13", "14"  
and "15" of the Complaint.

**AS TO COUNT TWO- Breach of Guaranty**

EIGHTH: Defendant repeats, reiterates and realleges each and every admission and denial to paragraphs numbered "1" through "11" and "12" through "15", with the same force and affect as though the same were set forth at length herein.

NINTH: Denies each and every allegation contained in Paragraphs numbered "17", "18" and "19" of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

TENTH: The instant case cannot be maintained by the Plaintiff ALGONQUIN CAPITAL MANAGEMENT, LLC, A Connecticut Limited Liability Company in that Plaintiff is not authorized to do business in the State of New York as required by Section 206 of the New York State Limited Liability Company Law.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

ELEVENTH: The Complaint warrants dismissal in that the maintenance of this action is duplicative of other actions commenced in the United States District Court for the Southern District of New York and the New York State Supreme Court for the County of Westchester.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

TWELFTH: The Complaint should be dismissed in that it is barred by the applicable Statute of Limitations.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

THIRTEENTH: The Complaint should be dismissed in that the Plaintiff was paid for the liability asserted against the Defendant by reason of the acquisition of certain property under the bankruptcy proceeding in the United States Bankruptcy Court of the Southern District of New York, **In Re: Ocean Power Corporation, Docket number 02-15989.**

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

FOURTEENTH: The Complaint should be dismissed under the doctrine of accord and satisfaction.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

FIFTEENTH: The Complaint should be dismissed in that the Court lacks diversity of jurisdiction under 28 USC 1332.

**WHEREFORE**, the Defendant JOSEPH MACEDA, demands judgment dismissing the Complaint, together with the costs, disbursements and attorneys' fees herein, and for such other and further relief as to this Court may seem just and proper.

Dated: Hempstead, NY  
September 24, 2007

WHITE, CIRRITO & NALLY, LLP

By:

  
MICHAEL L. CIRRITO (MLC-9053)

Attorneys for Defendant MACEDA

58 Hilton Avenue

Hempstead, NY 11550

(516) 292-1818

To:  
SULLIVAN & WORCESTER, LLP  
Attorneys for Plaintiff  
1290 Avenue of the Americas  
New York, New York 10104  
(212) 660-3000

**ATTORNEY VERIFICATION**

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NASSAU     )     ss.:

I, the undersigned, am an attorney admitted to practice in the Courts of New York State, and say that:

I, **MICHAEL L. CIRRITO**, am the attorney of record, for the Defendant MACEDA, and I have read the **VERIFIED ANSWER TO FIRST AMENDED COMPLAINT** know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Books, papers, records in possession.

The reason I make this affirmation instead of Defendant, is because Defendant resides in a County other than that in which affiant maintains an office.

I affirm that the following statements are true under penalties of perjury.

  
MICHAEL L. CIRRITO, ESQ.

Dated: Hempstead, New York  
September 24th, 2007